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July 9, 2019

VIA ELECTRONIC MAIL

Sandeep Mehta, P.E.
EPA Region 7
11201 Renner Blvd
Lenexa, KS 66219
email: mehta.sandeep@epa.gov

Re: Vogel Paint & Wax Company Maurice, Iowa Superfund Site – Changing the Groundwater Point of Compliance

Mr. Mehta:

Vogel Paint & Wax Company (“Vogel” or “the company”) would like clarity on whether EPA intends to change the Site’s groundwater point of compliance. The company is questioning whether it can move forward with implementing the Pilot Study Work Plan without this information. This is because changing the Site’s groundwater point of compliance significantly changes the goals and scope of the Pilot Study Work Plan. Additionally, changing the groundwater point of compliance is inconsistent with the Administrative Record.

Vogel is in the final stages of completing the Bio-Trap Study, and Ramboll is in the process of analyzing the Bio-Trap Study results to develop the Design Plan. However, the Pilot Study Work Plan was designed to satisfy the 2000 Explanation of Significant Differences (“ESD”) remedial action objectives (“RAOs”), which are meeting the Maximum Contaminant Levels (“MCLs”) at the Site’s property boundary. Ramboll is currently designing the Design Plan to meet the current RAOs.

It is my understanding that EPA Region 7, EPA Headquarters (“HQ”), and Iowa Department of Natural Resources (“IDNR”) had a conference call on May 20, 2019 to discuss the decision documents and delisting of the Site. Despite multiple inquiries to you requesting an update on the status of these discussions, Vogel only recently learned through IDNR that EPA HQ suggested changing the groundwater point of compliance from the Site’s property boundary to “everywhere” throughout the Site. IDNR also recently provided a courtesy copy of an updated Draft 2019 Five-Year Review that includes information that was not previously shared with Vogel. In Section 6.1 of the revised Draft, EPA includes the following:

RAOs for groundwater related to the point of compliance as defined in October 2000 Explanation of Significant Differences document are not consistent with the EPA guidance, “Summary of Key Existing EPA CERCLA Policies for

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Groundwater Restoration, June 26, 2009, OSWER Directive 9283.1-33” and will need to be revised/clarified before site completion.

Changing the groundwater point of compliance is completely at odds with the Site’s history and is inconsistent with the Administrative Record. The policy embodied in the 2009 guidance document was in effect in 2000 when the ESD was adopted by EPA and IDNR. (See 55 FR 8666, March 8, 1990) Moreover, the actual 2009 guidance document itself cited in the Draft 2019 Five-Year Review has been in existence during Vogel’s Five-Year Reviews in 2009 and 2014, yet that guidance has never affected EPA’s past determinations.¹ EPA has provided no new facts or other basis for concluding that the groundwater point of compliance now needs to be changed. This is discussed in detail below.

In the 2000 ESD, IDNR concluded, and EPA concurred, that meeting the MCL’s throughout the site was unreasonable.

While the ROD called for development of criteria for ceasing remedial action based on monitoring results, no such criteria have previously been established. Therefore, it might be inferred that compliance with chemical-specific groundwater ARARs was applicable to all groundwater at the site. In the more than a decade of time that has elapsed since the original ROD, it has become apparent that such a goal is not reasonable...

The remedial action objective (RAO) for groundwater prescribed in the ROD is to reduce contaminants in groundwater to established health-based standards for drinking water. This ESD clarifies this RAO by specifying where health-based standards must be achieved. With institutional controls applicable to the site property, the use of on-site groundwater for drinking water will be prohibited. However, the potential exists for contaminants migrating off-site to enter a drinking-water supply, even if such a water supply does not currently exist. By ensuring that groundwater does not leave the site with contaminants at levels in excess of drinking-water standards, off-site exposure to contaminants from the site in groundwater at concentrations in excess of health-based standards will not be possible. Therefore, the site property boundary is being designated as the point of compliance for groundwater ARARs.

(emphasis added)

¹ It must be noted that the 2009 Guidance document includes the following Footnote:

This document provides guidance to Regional staff regarding how the Agency intends to interpret and implement the National Oil and Hazardous Substance Pollution Contingency Plan (NCP) which provides the blueprint for CERCLA implementation. However, this document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based on circumstances.

(See Footnote 1) As such, EPA cannot now rely on its 2009 guidance document as if it is a binding regulation. Moreover, according to the guidance document itself, the particular circumstances of the situation might require deviation from the guidance. The record clearly establishes that the 1990 NCP Federal Register preamble was available to EPA and IDNR during the 2000 ESD discussions and during all Five-Year Reviews. EPA and IDNR determined that Vogel’s situation required deviation from the 1990 guidance.

Mr. Mehta
EPA Region 7
July 9, 2019

In EPA Region 7's October 30, 2000 letter (Attachment A), signed by the then-director of the Superfund Division, Michael Sanderson, EPA concurred with IDNR's 2000 ESD.

The proposed October 2000 ESD (enclosed), was prepared by the Iowa Department of Natural Resources (IDNR) and submitted to EPA for review and comment. The IDNR is the lead agency for this site. As the support agency, the EPA is provided the opportunity to concur with the ESD. The EPA hereby concurs with the ESD....

(emphasis added)

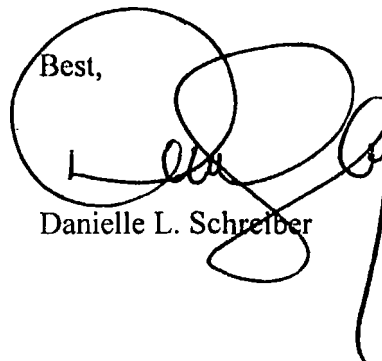
In 2000, when EPA and IDNR determined that the groundwater point of compliance should be the property boundary, the policy embodied within the 2009 guidance cited by EPA in Section 6.1 of the updated Draft 2019 Five-Year Review was already in existence. (See 55 FR 8666, 8753, March 8, 1990) Indeed, the section specific to groundwater point of compliance (see page 9 of the 2009 guidance) was taken from the National Contingency Plan's March 8, 1990 preamble, which states "remediation levels generally should be attained throughout the contaminated plume..." (*Id.*) As such, when IDNR and EPA made the determination that achieving the RAOs everywhere was not reasonable, the policy had been in existence for 10 years. Moreover, when EPA finalized the Five-Year Reviews in 1998, 2004, 2009, and 2014, neither EPA nor IDNR recommended changing the groundwater point of compliance.

Additionally, even if EPA could argue that the 2009 guidance document was "new" guidance published in 2009, the document was readily available to all agencies' staff during Vogel's Five-Year Reviews in 2009 and 2014. The groundwater point of compliance guidance in existence did not affect the site status during those reviews.

EPA cites no reasonable basis for concluding that the groundwater point of compliance now needs to be changed. Therefore, Vogel would like clarity on EPA's intention to change the groundwater point of compliance. The company is questioning whether to move forward with implementing the Pilot Study Work Plan without this information. Changing the Site's point of compliance to the entire Site, as opposed to the Site's property boundary line, significantly changes the goal and scope of the Pilot Study Work Plan. Additionally, changing the groundwater point of compliance is inconsistent with the Administrative Record and years of past determinations.

We would like the opportunity to discuss this with EPA Region 7 and IDNR as soon as possible.

Best,



Danielle L. Schreiber

Mr. Mehta
EPA Region 7
July 9, 2019

Encl.

CC via email:

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ATTACHMENT A

EPA Superfund

Explanation of Significant Differences:

VOGEL PAINT & WAX CO.
EPA ID: IAD980630487
OU 01
ORANGE CITY, IA
10/31/2000



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101**

October 31, 2000

Ms. Susan Dixon
Iowa Department of Natural Resources
Henry A. Wallace Building
900 East Grand
Des Moines, Iowa 50319

Dear Ms. Dixon:

By this letter, the U.S. Environmental Protection Agency (EPA) provides its comments to the proposed Explanation of Significant Differences (ESD) for the groundwater component of the Record of Decision (ROD) for the Vogel Paint & Wax Company site.

The proposed October 2000 ESD (enclosed), was prepared by the Iowa Department of Natural Resources (IDNR) and submitted to EPA for review and comment. The IDNR is the lead agency for this site. As the support agency, the EPA is provided the opportunity to concur with the ESD. The EPA hereby concurs with the ESD, with the following comments.

First, EPA comments that an ESD is the appropriate method to document the changes to the selected remedy. The proposed ESD describes a secondary technology for free product removal that enhances the primary technology of the existing pump and treat groundwater system. The pump and treat system was described in the September 1989 ROD. The secondary technology consists of excavation and replacement of contaminated soil, with subsequent soil vapor extraction and bioventing treatment. Under the proposed ESD, the groundwater pump and treat system will continue during and after the free product removal. The groundwater pump and treat system will be discontinued only after a determination that the groundwater cleanup goals have been met.

Second, EPA comments that additional public comment on the proposed ESD is not necessary. The proposed excavation and replacement of contaminated soil, with subsequent soil vapor extraction and bioventing treatment, is similar to the SW-3 soils cleanup alternative described in the September 1989 ROD. The SW-3 alternative described soil management to enhance biotreatment and volatilization of contaminants, and was selected as the soils component remedy in the ROD and successfully implemented on site. Because of this similarity, the combination of such a soil management component with the existing groundwater pump and treat system could have been reasonably anticipated based on the information available to the public at the time of the September 1989 ROD.



Finally, EPA comments that it is reasonable to anticipate that the proposed free product removal activities will result in air emissions of volatile organic contaminants. Such air emissions were anticipated and occurred during implementation of the SW-3 alternative. Based on this experience, the proposed ESD appropriately states that air emissions from the free product removal activities will comply with the applicable, relevant and appropriate requirements (ARARs) for air, as those ARARs were specified in the September 1989 ROD and the July 1994 ESD for the soils component of the remedy, and that measures will be taken during the free product removal activities to manage and prevent odor problems. To effect this requirement in the proposed ESD, a comprehensive air sampling and monitoring strategy must be developed and implemented at the site to assure that the free product removal activities are protective of human health and the environment.

Based upon our October 26 phone conversation, and a follow-up conversation between Jim Colbert of my staff and Bob Drustrup of IDNR, it is evident that IDNR recognizes the importance of community concerns and implementation of a comprehensive air sampling strategy during the construction and operation of the Soil Vapor Extraction/bioventing system. Indeed, an October 23 letter from IDNR to EPA indicates that the two closest neighbors have already been informed of the upcoming activities and that IDNR intends to publish a notice that briefly describes the ESD in the local newspaper.

Thank you for the cooperation and attention displayed by you and your staff with respect to the Vogel Paint & Wax Company site. Please contact Jim Colbert at (913) 551-7489 if you have any additional questions regarding EPA concurrence with this proposed ESD.

Sincerely,



Michael J. Sanderson
Director
Superfund Division

Enclosure

cc: Bob Drustrup, IDNR (w/ encl.)